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UNITED DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: CV 06-2555 PHX DGC (District of Arizona)

MDY Industires, LLC,

Plaintiff,

v.

Blizzard Entertainment, Inc. and
Vivendi Games, Inc.,

Defendants.

AFFIDAVIT OF JOE THALER

State of NORTH CAROLINA

SS:

County of WAKE

Joe Thaler, being duly sworn, deposes and states:

1. My name is Joe Thaler.
2. I am over 18 years of age. I reside at 10861 Hamilton Club Drive, Apt 301, Raleigh, North Carolina, 27617. I am fully competent to make this affidavit and I have personal knowledge of the facts stated in this affidavit.

3. I am a Member/Manager of Lavish Software, LLC. A Subpoena has been delivered to my residence in the above action, in which neither Lavish Software, LLC nor I are a party. A Copy of this Subpoena is annexed to this affidavit as Exhibit "A".

4. I make this affidavit in support of Lavish Software LLC and I's Motion to Quash.

5. Lavish Software, LLC is a limited liability company organized and existing under the laws of the State of Michigan, with its principal place of business in Wake County, North Carolina.

6. Lavish Software, LLC is in the business of developing, testing, implementing and distributing for profit software that attempts to enhance the experience of online video game players.

7. Lavish Software, LLC's success is a direct result of its reputation with online video game players as an independent and trustworthy company. This reputation is built on its good name and standing in the video game industry, which Lavish Software, LLC has worked very hard to maintain.

8. In the underlying civil action, as more clearly shown in the copies of the pleadings attached to this affidavit and labeled Exhibit "B", MDY Industries, LLC (the Plaintiff) seeks a declaration that its software (WOWglider) does not infringe on any rights of a video game and online gaming environment (World of Warcraft) developed by Blizzard Entertainment, Inc. and Vivendi Games, Inc. (the Defendants). In turn, Defendants have filed counterclaims against Plaintiff claiming that Plaintiff's WOWglider does in fact infringe on Defendants' World of Warcraft.

Documents Included in Subpoena

9. As can be seen from an actual review of the actual subpoena, if Lavish Software and I were compelled to produce the material demanded by this overbroad and oppressive subpoena, it would be required to make available to the Defendants all of the following:

a. Computer files which would reveal the years of design, programming and engineering that have lead to the intellectual property and software produced by Lavish Software, LLC.

b. Customer data in the form of specific World of Warcraft (WoW) accounts that Lavish Software, LLC and I have been associated with in the past, WoW accounts Lavish Software, LLC and I are currently associated with as well as WoW accounts Lavish Software, LLC and I may be associated with in the future.

10. From the facts state above, it is clear that disclosure of this type of information could and would severely compromise Lavish Software, LLC's integrity and reputation among the online gaming community.

11. If not quashed, this subpoena will compel Lavish Software, LLC to gain access to extremely valuable information that would provide them with Lavish Software LLC's trade secrets. It would also allow competitors of Lavish Software LLC who are not involved in this litigation to obtain information that could give them an unfair competitive advantage over Lavish Software, LLC.

12. After giving much serious consideration to the subpoena, and the issues of this litigation, it is my personal opinion based on my experience in this industry that if Lavish Software and I are compelled to produce the documents demanded and to testify


with respect to them in this litigation, it would result in irreparable and far-reaching injury to Lavish Software, LLC's reputation and goodwill as well as give a competitive edge to those parties who receive said documents. In particular:

(a) Elements of the design of Lavish Software, LLC and I's software and applications would be revealed to the parties in this litigation and to our competitors not involved in this litigation.

(b) The WoW accounts of Lavish Software LLC's customers would be compromised.

(c) To be successful in selling its product to the online gaming community, Lavish Software LLC must maintain a good reputation within the industry. If it is compelled to produce the information requested, Lavish Software LLC's reputation will be irreparably damaged.

Dated, this the 8th day of November, 2007.



Joe Thaler

Seal-Stamp




NORTH CAROLINA, Wake County.

I, **Joshua M. Whitaker**, a Notary Public of the County and State aforesaid, certify that **Joe Thaler**, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 8th day of November, 2007.

Use Black Ink



Notary Public

My Commission Expires: 10 Nov 2008

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2008, I served via facsimile and via email, if available, the attached Affidavit to the following persons. I have contacted parties to inform them we are filing in this manner.

Shane McGee
Attorney for the Defendants Vivendi Games, Inc. and Blizzard Entertainment, Inc.
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Scott Stein
Attorney for the Defendants Vivendi Games, Inc. and Blizzard Entertainment, Inc.
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Facsimile (602) 508-3914

A handwritten signature in black ink, appearing to read "Damion McCullers", written over a horizontal line.

Damion McCullers
Attorney for Joe Thaler and Lavish Software, LLC